



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[FNS-2022-0044]

RIN 0584-AE93

Child Nutrition Programs: Community Eligibility Provision – Increasing Options for Schools

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This rulemaking proposes to expand access to the Community Eligibility Provision by lowering the minimum identified student percentage participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools would have an opportunity to experience the benefits of the Community Eligibility Provision, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations. When all students have access to healthy school meals, meal participation tends to increase, and more children can experience nutritional benefits that fuel their learning, growth, and development. This proposed rule would also support State and local choices to expand the availability of free school meals for all through programs supported by State or local funding. Lowering the eligibility threshold would allow States and local educational agencies to optimize use of the Community Eligibility Provision, helping them to support school meals in a more streamlined manner.

DATES: Written comments on this proposed rule should be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to receive consideration.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Send comments to School Meals Policy Division, Food and Nutrition Service, P.O. Box 9233, Reston, VA 20195. All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Michelle Frey, Branch Chief, Policy Design Branch, School Meals Policy Division – 4th floor, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, telephone: 703-305-2590.

SUPPLEMENTARY INFORMATION:

Background

The Community Eligibility Provision (CEP) is an option for eligible schools to offer no-cost meals to all enrolled students without collecting household applications. Authorized by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), CEP is a reimbursement alternative for eligible local educational agencies (LEAs) and schools participating in both the National School Lunch Program (NSLP) and School Breakfast Program (SBP). CEP aims to combat child hunger in high poverty areas, while reducing administrative burden and increasing program efficiency by using current, readily available data to offer school meals to all students at no cost. CEP

eliminates the need for schools to collect household income applications by sharing eligibility data between specific Federal assistance programs; thus, reducing administrative burden for schools and families while intending to ensure that hunger is not a barrier to students' academic success.

Eligibility for CEP

To be eligible for CEP, an individual school, group of schools, or school district must meet or exceed the established identified student percentage (ISP) threshold in the school year prior to implementing CEP. The ISP is the percentage of enrolled students who are certified for free school meals without submitting a household application, such as those directly certified through Federal benefits programs like the Supplemental Nutrition Assistance Program (SNAP). For CEP, students who are certified for free meals without a household application are “identified students” (42 U.S.C. 1759a(a)(1)(F)(i); 7 CFR 245.9(f)(1)(ii)).¹ The ISP is calculated by dividing the total number of identified students by the total number of enrolled students:

$$\text{Identified Student Percentage} = \frac{\# \text{ Identified Students}}{\# \text{ Enrolled Students}}$$

Under current regulations, the minimum ISP is 40 percent; therefore, to be eligible for CEP, an individual school, group of schools, or school district must have an ISP greater than, or equal to, 40 percent (ISP \geq 40 percent) as of April 1 of the school year prior to implementing CEP (7 CFR 245.9(f)(3)(i)).

Current Requirements

The ISP determines eligibility to participate in CEP and is also the basis of Federal reimbursements for meals served to students in CEP schools. A 1.6 “multiplier” is established by statute. The ISP is multiplied by 1.6 to calculate the percentage of meals reimbursed at the

¹ Identified students include students living in households participating in SNAP, Temporary Assistance for Needy Families, and Food Distribution Program on Indian Reservations. Identified students also include those who are homeless, migrant, runaway, in foster care, or enrolled in Head Start. In some States, students are directly certified through Medicaid direct certification demonstration projects. Students in States participating in the Medicaid direct certification demonstration projects are only included in the ISP if they are certified for free meals (not reduced price meals).

Federal free rate (7 CFR 245.9(f)(4)(vi)). Any remaining meals, up to 100 percent, are reimbursed at the Federal paid rate.²

% Meals reimbursed at Federal free rate = ISP x 1.6

% Meals reimbursed at Federal paid rate = 100 - % meals reimbursed at Federal free rate

CEP requires that LEAs must pay, with non-Federal funds, any costs of offering free meals to all students that exceed the Federal assistance provided. Examples of non-Federal funding sources include, but are not limited to, funds provided by the State agency that exceed revenue matching requirements outlined in section 7 of the National School Lunch Act (NSLA) and at 7 CFR 210.17, profits from à la carte sales, and cash donations. If all operating costs are covered by the Federal assistance provided, then LEAs are not required to contribute non-Federal funds (7 CFR 245.9(f)(4)(vii)).

Statutory Requirements Regarding the ISP Threshold and CEP Multiplier

Pursuant to 42 U.S.C. 1759a(a)(1)(F)(ix), the U.S. Department of Agriculture (USDA) gradually phased in CEP from school year (SY) 2011-2012 to SY 2013-2014, before it was nationally implemented in SY 2014-2015. During this phase-in period, USDA was required by statute to set the CEP multiplier at 1.6 (42 U.S.C. 1759a(a)(1)(F)(vii)(I)) and the ISP threshold for eligibility at 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(I)). Starting July 1, 2014, when CEP was fully implemented, Congress gave the Secretary discretion to use a multiplier between 1.3 and 1.6 (42 U.S.C. 1759a(a)(1)(F)(vii)(II)) and an ISP threshold that is less than 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(II)).

Regulatory History & National Implementation

On November 4, 2013, USDA published a proposed rule in the Federal Register seeking to add CEP to regulations governing the determination of eligibility for free and reduced price meals and free milk in schools, consistent with amendments made to the NSLA by the HHFKA

² CEP schools only claim meals at the free and paid reimbursement rates. CEP schools do not claim reduced price meals.

(78 FR 65890). USDA drew on a range of information to develop the proposed rule, including the statutory language in the NSLA and knowledge gained through the phased-in implementation of CEP in SYs 2011-2012 through 2013-2014.

Beginning July 1, 2014, pursuant to 42 U.S.C. 1759a(a)(1)(F)(x)(I), CEP became available nationwide to all eligible schools at the discretion of their LEAs. Many State and local officials throughout the country enthusiastically embraced the new provision, resulting in significant CEP expansion. In SY 2014-2015, almost 14,000 schools in 2,190 LEAs elected CEP, resulting in about 6.4 million students with access to free meals each school day.³ About two-thirds of the 75 largest highly eligible school districts identified by USDA elected CEP for at least some of their schools in SY 2014-2015, while about half of electing LEAs had enrollments of 500 or fewer students.⁴ Significantly, these data indicated that a broad range of LEAs chose to elect CEP. During this time, USDA continued to provide extensive guidance and technical assistance through conference calls, public speaking engagements, webinars, guidance publications, in-person visits, collaboration with partner organizations, and focused contact with States and LEAs.

On July 29, 2016, USDA published the final rule, *National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010* [81 FR 50194, July 29, 2016], which codified CEP requirements that were implemented through statute and policy guidance, at 7 CFR 245.6 and 245.9(f). The final rule codified CEP requirements in Federal regulation, including the following:

- Eliminated the collection of school meal applications in CEP schools;

³ Center on Budget and Policy Priorities. (2015). Take Up of Community Eligibility This School Year. Available at <https://www.cbpp.org/research/take-up-of-community-eligibility-this-school-year>

⁴ Ibid. The term “highly eligible” refers to schools and districts with an ISP greater than or equal to 60 percent.

- Allowed eligible LEAs/schools to offer all students no-cost lunches and breakfasts for four successive school years;
- Limited CEP participation to LEAs and schools that have an ISP of at least 40 percent;
- Established 1.6 as the multiplier to be used to determine CEP claiming percentages for an entire 4-year CEP cycle;
- Required LEAs to pay, with non-Federal funds, the difference (if any) between the cost of serving meals at no cost to all students and the Federal assistance provided; and,
- Established procedures to determine the percentage of meals to be claimed at the Federal free and paid rates at CEP schools.

By codifying the CEP eligibility threshold and multiplier in the final rule, USDA committed to pursue any subsequent changes to the eligibility threshold or multiplier through the Federal regulatory process, including an opportunity for public comment. This gives stakeholders, including school districts and schools, an opportunity to consider changes and related impacts to the costs and benefits of electing CEP.

Benefits of CEP

Since its inception, CEP has been a consistent tool to address childhood hunger. Requiring schools to offer both breakfast and lunch to participate in CEP has increased the number of LEAs implementing or expanding the SBP, thereby giving children greater access to breakfast.⁵ Studies have also shown that CEP schools experienced significant student participation growth in their school meal programs. USDA published a CEP Characteristics

⁵ Among the 347 participating LEAs that responded to the CEP Evaluation Implementation Web Survey, 9 percent reported implementing or expanding their school breakfast program due to CEP. U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf> (p. 112).

Study in March 2022, which highlighted, in depth, the benefits of CEP.⁶ This first comprehensive study since CEP became available nationwide compared the impact of CEP participation in school districts that elected CEP to similar non-participating school districts. Overall, the study found that CEP participation resulted in sustained increases in student participation in both the NSLP and SBP.⁷ Notably, the study indicated that student participation in NSLP is about 7 percent higher in CEP school districts compared to similar, eligible LEAs that chose not to adopt CEP. It also found that student participation in SBP is about 12 percent higher in LEAs that participate in CEP.

While these participation increases are important because they show more children took advantage of SBP's and NSLP's nutritional benefits, increases in student participation also confer several other benefits. USDA's CEP Characteristics Study found that increases in student participation positively impacted LEAs' finances. Student participation increases contributed to CEP schools being significantly more likely to report that it was easier to balance nonprofit school nutrition financial accounts (i.e., break even), compared to respondents from non-participating schools. As a result of higher participation, schools may also take advantage of economies of scale both in administrative costs and in meal production, reducing the cost per meal. Increases in student participation were also associated with increased non-Federal revenues among study respondents: almost two-thirds of participating LEAs said that CEP was a factor in the increase in non-Federal revenues because State subsidies tied to meal counts also increased, providing LEAs with more non-Federal funds that can be used to support CEP.⁸

⁶ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>.

⁷ Among the Year 2 sample, the impact on the NSLP participation rates was statistically significant at five percentage points in the first year of CEP and six percentage points in the second year of CEP. This suggests that the impact of CEP lasted beyond the first year of implementation and actually grew by one percentage point from the first to second year of implementation. USDA Community Eligibility Provision Characteristics Study, Available at <https://fns-prod.azureedge.us/sites/default/files/resource-files/CEPSY2016-2017.pdf>.

⁸ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> (p.68)

A systematic review of research around free school meals for all students also found that free school meals, paired with strong nutrition standards (especially standards that promote vegetables, fruits, and whole grains), are positively associated with students' diet quality and academic performance, such as standardized math test scores.⁹ Furthermore, the review suggested that free school meals for all may resolve the issues of social stigma, a lack of information (e.g., households not knowing they need to apply or re-apply each year), challenges with applying (e.g., language or literacy barriers), or food insecurity of students who are not eligible for free or reduced price meals.¹⁰ Participation increases in CEP schools result in more students receiving the nutrition necessary to support learning.

Participation in CEP is also associated with a positive impact on household finances. A study conducted by the National Bureau of Economic Research indicated households with children receiving free school meals through CEP saved between 5 percent and 19 percent on their monthly grocery bills.¹¹ Researchers also observed that CEP exposure is associated with an almost 5 percent decline in households classified as food insecure.¹²

Another benefit of CEP is reduced administrative burden and increased program efficiency. CEP schools eliminate costs associated with school meal applications, including staff time and other resources dedicated to printing, distributing, collecting, processing, and verifying school meal applications. USDA's initial CEP study of the phase-in States demonstrated that CEP consistently saved time for LEA food service administrative staff, school nutrition professionals, and school administrators.¹³ The 2022 CEP Characteristics Study resulted in similar findings: 74 percent of participating LEAs reported a decreased burden on families, and

⁹ Cohen JFW, Hecht AA, McLoughlin GM, Turner L, Schwartz MB. Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review. *Nutrients*. 2021 Mar 11;13(3):911. Diet quality (pp. 6-9); Academic performance (p. 10).

¹⁰ *Ibid*, p. 33.

¹¹ National Bureau of Economics. (2022). The Effect of Free School Meals on Household Food Purchases: Evidence from the Community Eligibility Provision. Available at: <https://www.nber.org/papers/w29395>.

¹² *Ibid*. The term "CEP exposure" refers to the probability that a household has a child attending a CEP school.

¹³ U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf>.

65 percent reported decreased LEA administrative burden.¹⁴ Of those reporting a decreased administrative burden, food service staff spent more time conducting other administrative tasks (73 percent), overseeing food program operations (69 percent), and planning meal services (56 percent).¹⁵

CEP also eliminates the problem of unpaid meal debt – debt that accumulates when students who pay for school meals, at either full or reduced price, do not have money to pay at the point of sale. In their School Nutrition Trends Summary Report (2019), the School Nutrition Association found that approximately 75% of school districts have outstanding school meal debt.¹⁶ USDA’s Child Nutrition Programs Operations Study found that the median school food authority was owed approximately \$1,500 total in unpaid meal charges.¹⁷ The 2022 CEP Characteristics Study showed that about 70 percent of LEAs reported the elimination of unpaid meal charges as a benefit of CEP.¹⁸

Another related benefit is that CEP has been found to improve program integrity by simplifying Program administration.¹⁹ Program integrity is essential to the effectiveness of school nutrition programs, and responsible stewardship of Federal taxpayer dollars. Schools that participate in CEP do not rely on annual household applications that are typically used to determine students’ eligibility for free and reduced price meals. Instead, schools directly certify students through electronic data matching at the State or local level to establish ISPs. USDA’s third Access, Participation, Eligibility, and Certification Study found that LEAs had a much

¹⁴ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> (p.43).

¹⁵ Ibid, p. 44-45.

¹⁶ School Nutrition Association. (2019). School Nutrition Trends Report. This report is available to the public for purchase at <http://schoolnutrition.org/2019-school-nutrition-trends-summary-report/>.

¹⁷ Beyler, N., Murdoch, J., & Cabili, C. (2021). Child Nutrition Program Operations Study II: SY 2017–18. Prepared by 2M Research. Contract No. AG-3198-C-15-0008. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Holly Figueroa. Available online at: Child Nutrition Program Operations Study, School Year 2017-18 | Food and Nutrition Service ([usda.gov](https://www.usda.gov)).

¹⁸ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> (p.43).

¹⁹ U.S. Department of Agriculture. (2014). Community Eligibility Provision Evaluation Final Report. Available at: <http://www.fns.usda.gov/sites/default/files/CEPEvaluation.pdf> (p. 127).

lower error rate in directly certifying students – such as the “identified students” in CEP schools – than in certifying students by applications.²⁰ Since the nationwide expansion of CEP in SY 2014-2015, many States have enhanced their data matching systems to improve accuracy and reliability.²¹

Study results show that throughout its phase-in and national implementation, CEP accomplishes two goals: feeding schoolchildren and streamlining Program administration and operations. Participating LEAs have been highly satisfied with CEP and are likely to continue their participation: USDA’s 2022 CEP Characteristics Study found that most participating LEAs (97 percent) intended to participate in CEP the following school year, as did 23 percent of eligible, but non-participating LEAs.²²

Discussion

As of SY 2021-2022, 74.3 percent of eligible school districts were participating in CEP, reaching a total of 16.2 million school children in 33,300 schools.²³ Participating schools are located in all 50 States, the District of Columbia, and Guam, ensuring that students in high-poverty communities throughout the country can enter their classrooms well-nourished and ready to learn. Through this rulemaking, USDA intends to provide more LEAs and schools with the option to participate in CEP by lowering the minimum ISP participation threshold from 40 percent to 25 percent.

²⁰ Milfort et al. (2021). Third Access, Participation, Eligibility, and Certification Study. Prepared by Westat, Inc., Contract No. AG-3198-K-15-0054. Alexandria, VA: U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, Project Officer: Conor McGovern. Available online at: <https://fns-prod.azureedge.us/sites/default/files/resource-files/APECIII-Vol1.pdf> (p.8-14 through 9-3).

²¹ The calculated national percentage of SNAP-participant children directly certified for free school meals was 98 percent in both SY 2017-18 and SY 2018-19. This is an improvement of 6 percentage points from the direct certification performance rate in SY 2016-17, which was 92 percent, and an 11-percentage point increase since SY 2013-14. Data from Ranalli, Dennis, Templin, Joe, & Applebaum, Maggie (2021). *Direct Certification in the National School Lunch Program: State Implementation Progress Research Summary, School Year 2017-18 and School Year 2018-19*. Prepared by the U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support and Child Nutrition Programs, Alexandria, VA. Available at: <https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLPDirectCertification2017-1.pdf>.

²² U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>. p. 5.

²³ Food Research & Action Center. (2022). Community Eligibility: The Key to Hunger-Free Schools, School Year 2021-2022. Available at <https://frac.org/wp-content/uploads/cep-report-2022.pdf> (p. 4).

Rationale for Expanding CEP

As described above, school meals have the potential to positively impact children's health and academic outcomes. Providing meals at no cost can increase student participation and improve household finances and household food security. Electing CEP reduces administrative burden for schools, providing more time to focus on meal quality and other aspects of administering the Programs. To date, only LEAs, groups of schools and schools with ISPs of at least 40 percent have been able to experience the benefits of CEP.

During the CEP phase-in period, USDA was required to set the ISP threshold at 40 percent (42 U.S.C. 1759a(a)(1)(F)(viii)(I)). In the early years of nationwide CEP availability, State agencies and LEAs were concerned about the impact of CEP on NSLP and SBP participation and school finances. As a practical response to support financial viability, USDA established the CEP participation threshold at 40 percent.²⁴ In response to the 2013 rule that proposed establishing the 40 percent threshold, USDA received public comments that supported making CEP available to all schools, instead of limiting CEP to schools with ISPs of at least 40 percent. Despite supportive comments, USDA maintained the 40 percent threshold in the final rule to support the financial health of nonprofit school nutrition accounts. Now that CEP has been available for almost a decade, States and schools are generally more familiar and comfortable with how CEP works, mitigating some of the concerns that may have prevented earlier CEP elections. USDA has also published guidance and tools to help LEAs decide if CEP is a viable option, including guidance developed collaboratively with the U.S. Department of Education and the Federal Communications Commission around Title I and E-Rate funding, respectively.²⁵ To assist LEAs with making sound financial decisions related to CEP participation, the USDA created an online resource, the CEP Resource Center, which provides

²⁴ As described earlier, LEAs with lower ISPs may need reliable sources of non-Federal funding to support their nonprofit school nutrition accounts, and to make the account whole if operational costs exceed the Federal assistance provided.

²⁵ Title I Guidance for CEP schools is available at: <https://www.fns.usda.gov/cn/updated-title-i-guidance-schools-electing-community-eligibility>. E-Rate guidance for CEP schools is available at: <https://www.fns.usda.gov/cn/updated-e-rate-guidance-schools-electing-community-eligibility>.

extensive guidance and technical assistance to State agencies and LEAs, including practical tools and best practices to help LEAs estimate the Federal reimbursement under CEP.²⁶ In addition, USDA worked in cooperation with State agencies and anti-hunger partners to share resources, success stories and best practices for making CEP work at all ISP levels. These collective efforts have positioned LEAs to make informed decisions about CEP participation. Therefore, the concerns that contributed to USDA's decision to establish the ISP threshold at 40 percent have been alleviated. LEAs should now be well-situated to understand the implications of electing CEP and, if they are able to manage CEP financially, should be able to experience the benefits of CEP for their schools, students, and families.

In addition to giving eligible LEAs the choice to decide what is best for their schools, many States, schools, and communities experienced the benefits of healthy school meals for all during SYs 2020-2021 and 2021-2022 due to the COVID-19 pandemic. For these two school years during the COVID-19 pandemic, USDA provided waivers authorized under the Families First Coronavirus Response Act and the Continuing Appropriations Act, 2021 and Other Extensions Act that allowed schools across the country to offer free meals to all students.²⁷ By offering meals to all students at no cost during the pandemic, many schools experienced the benefits associated with free school meals for all, including increased student participation and positive impacts on student health, well-being, and food and nutrition security. Nationwide waivers permitting schools to offer free school meals to all students via the Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) demonstrated the benefits of offering all students free meals and, as a result, there is renewed interest in CEP.²⁸

²⁶ U.S. Department of Agriculture. Community Eligibility Resource Center. Available at <https://www.fns.usda.gov/cn/community-eligibility-provision>.

²⁷ On March 18, 2020, H.R. 6201 – Families First Coronavirus Response Act, became Public Law Number 116-127. The bill gave USDA authority to issue nationwide child nutrition waivers to ensure access to meals through the Child Nutrition Programs as communities responded to the COVID-19 pandemic. The bill also gave USDA authority to waive school meal pattern requirements for the child nutrition programs in response to a disruption to the food supply as a result of the COVID-19 pandemic. More information on the bill is available at: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text/eh>.

²⁸ States could opt-in to waivers that allowed schools to offer no-cost meals to all students via the SFSP or SSO in SY 2020-21, and via the SSO in SY 2021-22. For additional information, see COVID-19 Child Nutrition Responses #56: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations

Census Bureau data show food insecurity surged during the COVID-19 pandemic.²⁹

However, in 2021, food insecurity among households with children dropped, likely due – at least in part – to the widespread availability of no-cost meals available to children via schools authorized by Congress during the COVID-19 pandemic. Despite this decrease, five million children lived in food insecure households, which have been shown to rely on meals served via schools for their primary source of nutrition.^{30,31} The COVID-19 pandemic provided an unintended experiment that highlighted the critical role that schools play in providing food and nutrition security to millions of children.

During SY 2022-2023, schools returned to operating standard school meals programs as the flexibilities that Congress provided to offer free meals expired. This means that schools that were not participating in a special provision, like CEP, were required to claim meals by eligibility category (i.e., free, reduced price and paid) and charge students for meals. However, a growing number of States are investing in healthy school meals for all: most are maximizing LEAs' use of CEP as a mechanism to offer no-cost meals to all students, and are pairing CEP with State initiatives to expand access to free meals to all students.³² Many States offering healthy school meals for all are easing LEAs' financial concerns by ensuring that funding is

through December 2020 (available at: <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-56>), COVID-19 Child Nutrition Response #59: Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through School Year 2020-2021 – Extension (available at: <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-59>), and COVID-19 Child Nutrition Response #85: Nationwide Waiver to Allow the Seamless Summer Option through School Year 2021-22 (available at: <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-85>). A complete list of COVID-19-related waivers issued by State is available at: <https://www.fns.usda.gov/disaster/pandemic/covid-19/cn-waivers-flexibilities>

²⁹ Brynne Keith-Jennings, Catlin Nchako, and Joseph Llobrera, “Number of Families Struggling to Afford Food Rose Steeply in Pandemic and Remains High, Especially Among Children and Households of Color,” CBPP, April 27, 2021, <https://www.cbpp.org/research/food-assistance/number-of-families-struggling-to-afford-food-rose-steeply-in-pandemic-and>.

³⁰ Food insecurity may have improved for households with children in 2021 because of the expansion of Federal nutrition assistance programs, such as widespread availability of no-cost meals and other forms of assistance targeting households with children, such as the expanded Child Tax Credit or Pandemic Electronic Benefits Transfer (P-EBT) program. Household Food Security in the United States in 2021, by Alisha Coleman-Jensen, Matthew P. Rabbitt, Christian A. Gregory, and Anita Singh, ERS, September 2022 (p. 9).

³¹ Smith, T.A. Do School Food Programs Improve Child Dietary Quality? *Am. J. Agric. Econ.* 2016, 99, 339–356. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1093/ajae/aaw091>.

³² National Conference of State Legislatures. (2022). States Step in as End of Free School Meal Waivers Looms. Available at <https://www.ncsl.org/research/human-services/states-step-in-as-end-of-free-school-meal-waivers-looms-magazine2022.aspx>.

available to cover any gaps between operational costs and Federal assistance.³³ This additional funding helps make CEP financially viable for schools. Lowering the CEP minimum eligibility threshold would provide States and LEAs with greater flexibility to combine CEP with State initiatives to simplify Program administration, reduce burden, and offer meals to all students at no charge.

Why USDA is Proposing a 25 Percent ISP Threshold

As previously discussed, USDA has the discretion to establish an ISP threshold that is lower than 40 percent. USDA is proposing to establish a 25 percent ISP threshold for LEAs, schools, or groups of schools to elect CEP. This threshold would provide the opportunity for more LEAs located in high poverty areas to elect CEP. The lower threshold will allow these LEAs, especially those with non-Federal funds available to support school meals, to consider CEP and its numerous benefits.

To determine an appropriate threshold, USDA considered operational factors, including characteristics of LEAs currently eligible and near eligible to elect CEP, and analyzed the composition of the ISP and the proportion of free and reduced price students at varying ISP levels. Based on these analyses, at a 25 percent ISP, USDA estimates that at least 45 percent of students would be eligible for free or reduced price meals, if household income applications were collected. This 45 percent reflects both directly certified students and students eligible via household income applications and could be higher if LEAs certify more students for free or reduced price benefits via applications versus direct certification.

A 25 percent CEP eligibility threshold also aligns operationally with the minimum threshold for which severe need payments are provided under the Child Nutrition Act to incentivize schools to participate in the SBP. Severe need payments are provided to help schools

³³ Schools must use non-Federal funding to cover food service costs that exceed the Federal assistance provided. As an example, if an LEA's ISP is 40, the LEA would claim 64 percent of meals at the free rate ($40 \times 1.6 = 64$) and 36 percent of meals at the paid rate. If the cost of providing all meals at no cost is greater than the Federal assistance provided, the LEA must contribute non-federal funding to make up the difference.

that serve high proportions of children from low-income households to start and maintain school breakfast programs. Under CEP, a minimum ISP of 25 percent results in 40 percent of meals reimbursed at the free rate ($25 \times 1.6 = 40$). Schools where at least 40 percent of the lunches served to students in the second preceding school year were free or reduced price qualify as severe need schools and receive this additional reimbursement (42 U.S.C. 1773(d); 7 CFR 220.9(d)). CEP and severe need payments strive to benefit schools that serve high poverty areas. Under the current ISP threshold of 40 percent, individually eligible CEP schools receive qualify for the additional severe need payments.³⁴ This would continue under the proposed 25 percent ISP threshold. These schools with an ISP of 25 percent are already likely receiving severe need payments based on USDA's analysis that schools with an ISP of 25 percent are estimated to have a free and reduced price percentage of at least 45 percent. Aligning the CEP threshold with the severe need payments threshold simplifies this determination and further supports the SBP through CEP.³⁵

In addition, under current statutory requirements, LEAs and schools that are nearly eligible to elect CEP (i.e., schools with ISPs of at least 30 percent, but less than 40 percent) must be annually notified of their near eligibility (42 U.S.C. 1759a(a)(1)(F)(x)(II); 7 CFR 245.9(f)(5) and (f)(6)). This annual notification intends to prompt nearly eligible LEAs and schools to consider CEP and whether it is beneficial to take actions (e.g., increase direct certification matching) to gain eligibility to elect CEP. A 25 percent threshold increases options for LEAs and schools that are currently near eligible, so they have more opportunity to consider electing CEP.

A 25 percent threshold allows CEP to benefit communities with high proportions of children eligible for free or reduced price meals. For schools with similar identified student populations, especially those with non-Federal funds available to support school meals, CEP may be financially viable and offer significant student health, operational, and administrative benefits.

³⁴ "Individually eligible" means a school's individual ISP is 40 percent or higher.

³⁵ More than 80 percent of total School Breakfast Program breakfasts served receive severe need payments, based on FNS Administrative data from the National Data Bank.

Non-CEP schools that serve high proportions of low-income children are expending already-constrained resources to collect and process school meal applications to ensure low-income students have access to free or reduced price meals. Lowering the CEP threshold to 25 percent provides an opportunity for more LEAs with high proportions of low-income students to capitalize on CEP's administrative and operational benefits, while maintaining CEP's intent to provide all students in high poverty areas with healthy, free meals.

What does a lower CEP threshold mean for schools? Considerations for Electing CEP

Participating in CEP is a voluntary decision made by LEAs based on their unique student populations. LEA decisionmakers must consider student health, educational, administrative, and financial factors when deciding to elect CEP. USDA's CEP studies found that financial concerns were the most significant barrier to CEP participation for LEAs with lower ISPs.³⁶

Making CEP work at a lower ISP requires careful consideration. A school participating with a 25 percent ISP would receive the Federal free reimbursement for 40 percent of student meals served ($25 \times 1.6 = 40$); the remaining 60 percent of student meals served would be reimbursed at the lower, paid rate. Eligible schools must assess their ability to cover operating costs with Federal assistance and, if necessary, other non-Federal funds. Schools with lower ISPs are strongly encouraged to explore CEP with prudence: for example, conduct a financial analysis to determine if meals can be offered at no charge to all students while, considering the loss of student payments as a revenue stream, maintaining the financial health of the school nutrition department's budget. In addition, conducting robust data matching is critical to support CEP implementation. To optimize CEP's reach and impact, States and school districts must work together to ensure that data matching systems find all identified students, so a school's ISP accurately reflects its student population. Lastly, LEAs and schools should consider how any

³⁶ USDA's Community Eligibility Provision Characteristics Study, School Year 2016-2017 available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17> defined LEAs with "lower ISPs" as LEAs with ISPs at the lower end of CEP eligibility: between 40 and 50 percent. USDA assumes that, if the eligibility threshold was lowered to 25 percent, eligible LEAs with lower ISPs (i.e., between 25 and 40 percent) would have similar financial concerns.

data loss from school meal applications may impact other funding levels outside of the school meal programs. As previously stated, USDA has worked closely with the U.S. Department of Education and the Federal Communications Commission around Title I and E-Rate funding, respectively.³⁷ However, there may be additional impacts that LEAs and schools need to consider.

If CEP is financially viable, LEAs with lower ISPs should strongly consider electing CEP to experience the administrative, operational, and health benefits it confers to students, families, schools, and school nutrition departments.

Conclusion

This rulemaking proposes to lower the CEP eligibility threshold from 40 percent to 25 percent, and make related, conforming changes to the CEP regulatory text at 7 CFR 245.9(f). Electing CEP is a LEA-level decision, not a requirement, so local schools and communities have discretion to decide if electing CEP is beneficial. Through this proposed action, USDA aims to expand CEP's nutritional, operational, and administrative benefits to more schools serving low-income students in high poverty areas, which has the potential to positively impact students, low-income families, schools, and school nutrition departments. In addition, a lower threshold would support the growing number of States that are choosing to invest their own funds to provide free school meals to all students, through maximizing LEAs' use of CEP in combination with State-specific initiatives.

Proposed Regulatory Changes

Minimum ISP

Current Requirement

³⁷ Title I Guidance for CEP schools is available at: <https://www.fns.usda.gov/cn/updated-title-i-guidance-schools-electing-community-eligibility>. E-Rate guidance for CEP schools is available at: <https://www.fns.usda.gov/cn/updated-e-rate-guidance-schools-electing-community-eligibility>.

Participating in CEP is a voluntary decision made by LEAs based on their unique student populations. To be eligible for CEP under current regulations at 7 CFR 245.9(f), an LEA, group of schools, or school must:

- Ensure that at least 40 percent of enrolled students are identified students;
- Participate in both the NSLP and SBP; and
- Offer lunches and breakfasts to all enrolled students at no charge.

Section 11(a)(1)(F)(iii) of the NSLA and program regulations at 7 CFR 245.9(f)(3)(i) require the ISP to be established using the number of identified students and the number of total enrolled students as of April 1 of the prior school year. Through CEP's grouping mechanism³⁸, LEAs have discretion to elect CEP at schools with an ISP lower than 40 percent as long as the group's aggregate ISP meets the 40 percent threshold. The claiming percentage established for an LEA, group of schools, or an individual school is valid for a period of up to four school years. If the ISP increases during the 4-year cycle, a new cycle can be started using a new ISP at any time.

Proposed Change

This proposed rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA, group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Grace Year

Current Requirement

Section 11(a)(1)(F)(v)(I) of the NSLA requires schools and LEAs in the fourth year of a 4-year CEP cycle interested in continuing participation in CEP to calculate a new ISP reflective

³⁸ LEAs may "group" schools within an LEA to participate in CEP as a single entity with a shared ISP. The ISP for a group of schools is calculated by dividing the sum of the identified students for the entire group of schools by the sum of the total student enrollment for the entire group of schools.

of April 1 of the cycle's fourth year to: 1) elect a new 4-year CEP cycle with a new ISP; and 2) meet the following school year's publication and notification requirements as outlined at 7 CFR 245.9(f)(5). If an LEA determines that a new 4-year cycle may not be immediately elected because its ISP is less than the required threshold, but no more than 10 percentage points lower, then the LEA may elect to participate in CEP for an additional (fifth) year, or "grace year" (Section 11(a)(1)(F)(v) of the NSLA and 7 CFR 245.9(f)(4)(ix)). This additional year gives CEP LEAs an opportunity to increase their ISPs (e.g., via improved direct certification) to begin a new 4-year CEP cycle. If the ISP as of April 1 of the grace year does not meet the minimum ISP requirement, the LEA must return to standard counting and claiming, or enroll in another special provision option for the following school year. The Federal reimbursement in the grace year is based on the ISP as of April 1 in the fourth year of the CEP cycle multiplied by 1.6.

Proposed Change

This proposed rule would amend 7 CFR 245.9(f)(4)(ix), the regulations governing grace years, to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3), allowing an LEA, group of schools, or school with an ISP of less than 25 percent but equal to or greater than 15 percent (as of April 1 of the fourth year of a CEP cycle) to continue using CEP for a grace year. This rulemaking proposes only to change the numbers (e.g., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Identification and Notification of Potential CEP LEAs and Schools Current Requirement

Section 11(a)(1)(F)(x)(II) of the NSLA, as implemented by 7 CFR 245.9(f)(5) and (6), requires that States publish, annually by May 1, lists of LEAs and schools eligible and nearly eligible to elect CEP for the next school year. Eligible schools have an ISP that meets the required minimum threshold – currently 40 percent – and nearly eligible schools have an ISP no more than 10 percentage points lower than the minimum required threshold.

To meet this requirement, States must notify LEAs of district wide eligibility, and LEAs must notify State agencies of school-level eligibility by April 15 each year. Requiring this exchange of information by April 15 allows States to meet the May 1 deadline, by which States have to publish the lists of eligible and nearly eligible schools on their public websites. States and LEAs may share the required information prior to the April 15 deadline.

Proposed Change

This rulemaking proposes the following changes to the identification requirements to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- At 7 CFR 245.9(f)(5)(i), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools that are eligible to elect CEP, the eligibility threshold of “at least 40 percent” would change to a threshold of “at least 25 percent”;
- At 7 CFR 245.9(f)(5)(ii), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools that are nearly eligible to elect CEP, the eligibility threshold of “less than 40 percent but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent but greater than or equal to 15 percent”; and
- At 7 CFR 245.9(f)(5)(iii), which requires LEAs to submit to the State agency no later than April 15 of each school year a list of schools currently in year 4 of the CEP cycle and eligible for a grace year, the eligibility threshold of “less than 40 percent but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent but greater than or equal to 15 percent.”

Similarly, this rulemaking proposes the following conforming changes to the State agency notification requirements:

- At 7 CFR 245.9(f)(6)(i), which requires the State agency to notify LEAs that are eligible to participate in CEP district wide of their eligibility to elect CEP in the

subsequent school year, the estimated cash assistance the LEA would receive, and the State-specific procedures to participate in CEP, the eligibility threshold of “at least 40 percent” would change to a threshold of “at least 25 percent.”

- At 7 CFR 245.9(f)(6)(ii), which requires the State agency to notify LEAs that they may be eligible to participate in CEP in the subsequent year if they increase their ISP to meet the eligibility requirements as of April 1, the eligibility threshold of “less than 40 percent district wide but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent district wide but greater than or equal to 15 percent”; and
- At 7 CFR 245.9(f)(6)(iv), which requires the State agency to notify LEAs currently in year 4 of their grace year eligibility, the eligibility threshold of “less than 40 percent but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent but greater than or equal to 15 percent.”

This rulemaking proposes only to change the numbers (e.g., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Public Notification Requirements

Current Requirement

Section 11(a)(1)(F)(x)(III) of the NSLA, as implemented by 7 CFR 245.9(f)(7), requires, annually by May 1, State agencies to submit to USDA lists of LEAs and schools eligible to elect CEP. State agencies are required to publish lists of eligible and nearly eligible LEAs and schools on their websites in a readily accessible format. Eligible schools have an ISP that meets the minimum required threshold, and nearly eligible schools have an ISP no more than 10 percentage points lower than the minimum required threshold.

Proposed Change

This proposed rule would amend the following public notification requirements to conform with the proposed 25 percent ISP threshold in 7 CFR 245.9(f)(3):

- At 7 CFR 245.9(f)(7)(i), which requires the State agency to make readily accessible on its website eligible and near eligible schools and schools currently in year 4 of the CEP cycle, the eligibility threshold of “at least 40 percent” would change to “at least 25 percent.” In the same paragraph, “less than 40 percent but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent but greater than or equal to 15 percent.”
- At 7 CFR 245.9(f)(7)(ii), which requires the State agency to make readily accessible on its website eligible and near eligible LEAs and LEAs currently in year 4, the eligibility threshold of “at least 40 percent district wide” would change to a threshold of “at least 25 percent district wide,” and the eligibility threshold of “less than 40 percent district wide but greater than or equal to 30 percent” would change to a threshold of “less than 25 percent district wide but greater than or equal to 15 percent.”

This rulemaking proposes only to change the numbers (e.g., 40 percent to 25 percent, 30 percent to 15 percent) consistent with the proposed lower threshold; no additional substantive changes are proposed by this rulemaking.

Public Comments Requested

USDA solicits public comments on the proposed change to lower the CEP minimum ISP participation threshold to 25 percent. USDA also seeks public comments on the following questions:

- (1) To what extent are LEAs that would be newly eligible under this proposed rule expected to elect CEP?
- (2) What sources of non-Federal funds are available to support LEAs electing CEP at lower ISPs?

- (3) In a typical year, how much time do LEAs spend on administrative duties that may be eliminated by electing CEP (e.g., processing applications, managing unpaid meal charges, conducting verification)? What administrative activities are included in that estimate?
- (4) To what extent are administrative cost savings a factor in determining whether to elect CEP?
- (5) How do State policies related to offering free school meals for all students influence the likelihood of CEP election among newly eligible LEAs?

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This proposed rule has been designated as not significant by the Office of Management and Budget. Therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. The provisions of this proposed rule are intended to reflect the operational needs of LEAs of all sizes. No specific additional burdens are placed on small LEAs seeking to operate CEP. USDA's 2022 CEP Characteristics Study found that 36 percent of LEAs participating in

CEP in SY 2016-17 were single-school LEAs; 32 percent of participating LEAs were in rural areas; and 83 percent served fewer than 5,000 students.³⁹ For smaller LEAs, the decision to elect CEP may be a simpler process and/or involve gaining approvals from fewer governing bodies. Additionally, CEP is an optional provision, and there is no requirement for LEAs to participate. Currently, many small LEAs participate in CEP; in SY 2016-17, 1,939 of the 4,263 school districts (45 percent) electing CEP had enrollments of 999 or less.⁴⁰

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments, and the private sector. Under section 202 of UMRA, USDA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, or Tribal governments in the aggregate, or to the private sector, of \$146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at <https://www.bea.gov/iTable>) in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of URMA) for State, local and Tribal governments, or the private sector, of \$146 million or more in any one year. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12372

³⁹ U.S. Department of Agriculture. (2022). USDA Community Eligibility Provision Characteristics Study, School Year 2016-2017. OMB # 0584-0612, expiration 9/30/2019. Available at <https://www.fns.usda.gov/cn/usda-cep-characteristics-study-sy-2016-17>

⁴⁰ Ibid.

The NSLP and SBP are assigned Assistance Listing Numbers – NSLP (10.555) and SBP (10.553) – and are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (see 2 CFR chapter IV).⁴¹ Since the child nutrition programs are State-administered, USDA’s FNS Regional Offices have formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency’s considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this proposed rule does not have federalism implications. Electing CEP is a local decision, not a Federal mandate, and lowering the CEP eligibility threshold from 40 percent to 25 percent does not limit State or local policymaking discretion. Furthermore, this proposed rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its

⁴¹ Assistance listings are detailed public descriptions of federal programs that provide grants, loans, scholarships, insurance, and other types of assistance awards. More information is available at: <https://sam.gov/content/home>.

full implementation. However, FNS does not expect significant inconsistencies between this proposed rule and existing State or local regulations regarding the provision of school food service operations under CEP. This proposed rule would permit schools to elect CEP if their ISP is greater than or equal to 25 percent. Per statutory requirements outlined in the NSLA, State agencies operating the Federal school meal programs are unable to bar an eligible LEA from CEP participation. Additionally, States may not set an eligibility threshold lower than an ISP of 25 percent for participation in CEP. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this proposed rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Departmental Regulation 4300-004, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the proposed rule might have on participants on the basis of age, race, color, national origin, sex, and disability. The FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis provide ample consideration to participants' ability to participate in the NSLP and SBP. The promulgation of this proposed rule would expand access to no-cost meals for all enrolled students at participating CEP schools by lowering the minimum participation threshold. As previously outlined, the proposed rule is likely to impact the growing number of minority students and families attending public schools that face a greater risk of food insecurity and health disparities by providing sustained nutritious food and reducing families' paperwork burdens.^{42,43} The changes implemented by this proposed rule is likely to impact participating LEAs and SFAs by providing greater flexibility to offer no-cost

⁴² U.S. Department of Education's National Center for Education Statistics. (2022). Racial/Ethnic Enrollment in Public Schools. Available at: <https://nces.ed.gov/programs/coe/indicator/cge/racial-ethnic-enrollment>.

⁴³ Leveraging the White House Conference to Promote and Elevate Nutrition Security: The Role of the USDA Food and Nutrition Service (2022). Available at: <https://www.usda.gov/sites/default/files/documents/wh-2022-nutrition-conference-fns-role.pdf>. (p. 7).

meals to students which would further support eliminating unpaid meal debt, minimizing stigma, streamlining meal service operations, and reducing paperwork for school nutrition staff.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS provides regularly scheduled consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. This proposed rule will be discussed during the next consultation session, planned for Spring 2023. FNS is unaware of any current Tribal laws that could be in conflict with the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collection of information requirements by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB Control Number. This rulemaking proposes to expand access to the Community Eligibility Provision (CEP) by lowering the minimum ISP participation threshold from 40 percent to 25 percent, which would give States and schools greater flexibility to choose to invest non-Federal funds to offer no-cost meals to all enrolled students. As a result, more students, families, and schools would have an opportunity to experience the benefits of CEP, including access to meals at no cost, eliminating unpaid meal charges, minimizing stigma, reducing paperwork for school nutrition staff and families, and streamlining meal service operations.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule would revise existing information collection requirements, which are subject to review and approval by OMB. These existing requirements are currently approved under OMB Control Number 0584-0026, 7 *CFR Part 245 - Determining Eligibility for Free & Reduced Price Meals and Free Milk in Schools*, expiration date July 31, 2023. Revisions to the currently approved information collection requirements will result in a decrease in burden on State and local program operators as well as participating households. FNS is submitting for public comment the changes in the information collection burden that would result from this proposed rule. Because the approval for OMB Control Number 0584-0026 expires on July 31, 2023, to ensure that the review of this proposed rule does not interfere with this renewal, FNS is requesting a new OMB Control Number for the existing information requirements which are impacted by this proposed rule. The proposals outlined in this rulemaking will therefore initially be shown as increases to the information collection inventory. After OMB has approved the information collection requirements submitted in conjunction with the final rule and after the renewal is completed, FNS will merge these requirements and their burden into OMB Control Number 0584-0026. At this point, the decrease in burden noted above will be fully captured in the burden for the collection.

Comments on this proposed rule and changes in the information collection burden must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments may be sent to: School Meals Policy Division, Food and Nutrition Service, P.O. Box 9233, Reston, VA 20195. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall

have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Community Eligibility Provision: Increasing Options for Schools

Form Number: None

OMB Control Number: 0584-NEW

Expiration Date: Not Yet Determined.

Type of Request: New Collection

Abstract: This is a new information collection that revises the existing information collection request approved under OMB Control Number 0584-0026. Below is a summary of the changes in the rule and the accompanying reporting and recordkeeping requirements that will impact the burden that program requirements have on State administering agencies, local education agencies (LEAs), and participating households.

Participating in the CEP is a voluntary decision made by local school districts. To be eligible for CEP under current program regulations, an LEA, group of schools, or school must ensure that at least 40 percent of enrolled students are identified students, participate in both the National School Lunch Program and the School Breakfast Program, and serve lunches and breakfasts to all enrolled students at no charge.

Identified students are certified for free school meals without submitting a household application, such as those directly certified through the Supplemental Nutrition Assistance Program (SNAP).

This proposed rule will expand access to CEP by lowering the ISP. This will provide more

schools with an additional option for offering no-cost meals to students without requiring households to submit applications for free or reduced price meals.

This proposed rule would amend 7 CFR 245.9(f)(3)(i) to require a LEA, group of schools, or school to have an ISP of at least 25 percent, as of April 1 of the school year prior to participating in CEP. Individual schools participating in CEP as part of a group would be permitted to have an ISP lower than 25 percent, provided that the group's aggregate ISP is at least 25 percent.

Reporting

State Agencies

The changes proposed in this rulemaking will impact the existing reporting requirement currently approved under OMB Control Number 0584-0026 and found at 7 CFR 245.9(f)(6) that State agencies must notify LEAs of their CEP status. USDA expects that the number of LEAs that must be notified will increase by 4,628 based on the proposed changes. USDA estimates the 54 State agency respondents will be required to notify approximately 86 additional LEAs each year, and that it takes approximately three minutes (.050 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 231 annual burden hours and 4,628 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 231 hours and 4,628 responses will be added to the collection.

LEAs

The changes proposed in this rulemaking will impact the existing reporting requirements currently approved under OMB Control Number 0584-0026 for LEAs.

USDA estimates that 337 additional LEAs will elect CEP and will be required to fulfill the reporting requirement at 7 CFR 245.9(f)(4)(i) that LEAs submit to the State agency documentation of an acceptable ISP of the LEA/school electing the provision currently approved under OMB Control Number 0584-0026. USDA estimates that the 337 LEA respondents will be required to submit ISP data when electing CEP each year and that it takes approximately 15

minutes (.25 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 84 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 84 hours and 337 responses will be added to the collection.

USDA expects that as a result of the proposed changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to process free and reduced price meal applications and conduct verification.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(i) that LEAs notify households of approval of meal benefit applications. USDA estimates that 15,003 LEA respondents will be required to notify 219 households of approval of meal benefit applications each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 65,713 annual burden hours and 3,285,657 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 1,700 hours and 85,018 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(c)(6)(ii) that LEAs notify households in writing that children are eligible for free meals based on direct certification and that no application is required. USDA estimates that 15,003 LEA respondents will be required to notify 332 households in writing that children are eligible for free meals based on direct certification and that no application is required each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 99,620 annual burden hours and 4,980,996 responses into the new information collection request. Once this new collection is merged into OMB Control

Number 0584-0026, USDA expects that there will be an approximate decrease of 2,296 hours and 114,780 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6 (c)(7) that LEAs provide written notice to each household of denied free or reduced price benefits. USDA estimates that 15,003 LEA respondents will be required to provide written notice to approximately 12 households denied free or reduced price benefits each year and that it takes approximately one minute (.02 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 3,469 annual burden hours and 173,435 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 79 hours and 3,969 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6a(f) that LEAs notify households of selection for verification. USDA estimates that 15,003 LEA respondents will be required to notify approximately seven households of selection for verification and that it takes approximately 15 minutes (.25 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 24,380 annual burden hours and 97,520 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 712 hours and 2,849 responses.

USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6a(j) that LEAs provide households that failed to confirm eligibility with 10 days' notice for receiving a reduction or termination of free or reduced price meal benefit. USDA estimates that 15,003 LEA respondents will be required to provide approximately three households that failed to confirm eligibility with 10

days' notice for receiving a reduction or termination of free or reduced price meal benefits and that it takes approximately six minutes (0.1 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 3,976 annual burden hours and 39,798 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 95 hours and 949 responses.

USDA estimates that 4,628 more LEAs than currently approved under OMB Control Number 0584-0026 will fulfill the requirement at 7 CFR 245.9(f)(5) that LEAs must submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency. USDA estimates that 4,628 LEA respondents will be required to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status each year and that it takes approximately five minutes (.08 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 370 annual burden hours and 4,628 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that 370 hours and 4,628 responses will be added to the collection. USDA estimates that 337 more LEAs than currently approved under OMB Control Number 0584-0026 will fulfill the requirement at 7 CFR 245.9(g) that LEAs amend free and reduced policy statements and certify that schools meet the eligibility criteria when electing CEP and that it takes approximately six minutes (.1 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 34 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 34 hours and 337 responses will be added to the collection.

Households

Since households attending schools participating in CEP are not required to submit applications, USDA estimates that, with the proposed changes, 77,947 fewer households than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 245.6(a)(1) that households complete an application form for free or reduced price meal benefits. USDA estimates that 3,470,131 household respondents will be required to submit applications and that it takes approximately seven minutes (.110 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 381,714 annual burden hours and 3,470,131 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 8,574 hours and 77,947 responses.

Households attending schools participating in CEP are also not required to assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 2,205 fewer households than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 245.6a (a)(7)(i) that households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA. USDA estimates that 98,164 household respondents will be required to assemble written evidence for verification of eligibility for free and reduced price meals and that it takes approximately 30 minutes (.5 hours) to complete this reporting requirement for each record. The proposed reporting requirement adds a total of 49,082 annual burden hours and 98,164 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 1,103 hours and 2,205 responses.

Recordkeeping

State Agencies

The changes proposed in this rulemaking will impact the existing recordkeeping requirement currently approved under OMB Control Number 0584-0026 and found at 7 CFR 245.9(f)(4)(ii)

that State agencies must review and confirm LEAs' eligibility to participate in CEP. USDA expects that State agencies will need to review an additional 337 LEAs with schools newly electing CEP based on the changes proposed in this rulemaking. USDA estimates that 54 State Agency respondents will be required to review and confirm LEAs' eligibility to participate in Provisions 1, 2, or 3 or the CEP for approximately 337 LEAs electing CEP each year and that it takes approximately five minutes (.08 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 27 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 27 hours and 337 responses will be added to the collection.

LEAs

The changes proposed in this rulemaking will impact the existing reporting requirements currently approved under OMB Control Number 0584-0026 for LEAs. USDA expects that as a result of the proposed changes, more LEAs electing CEP will be electing CEP for all schools in the LEA, or district wide. This will result in a decrease in the number of LEAs required to maintain documentation substantiating eligibility determinations. USDA estimates 337 fewer LEAs than currently approved under OMB Control Number 0584-0026 will be required to fulfill the requirement at 7 CFR 245.6(e) to maintain documentation substantiating eligibility determinations for three years after the end of the fiscal year to which they pertain. USDA estimates that 15,003 LEA respondents will be required to maintain documentation related to substantiating eligibility determinations for three years after the end of the fiscal year to which they pertain and that it takes approximately 5 minutes (.08 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 1,200 annual burden hours and 15,003 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that there will be an approximate decrease of 27 hours and 337 responses.

USDA expects that as a result of the proposed changes, 337 more LEAs than currently approved under OMB Control Number 0584-0026 will elect CEP and be required to fulfill the recordkeeping requirement at 7 CFR 245.9(h)(3) that LEAs maintain documentation related to the methodology used to calculate the ISP and determine eligibility for the CEP. USDA estimates that 337 LEA respondents will be required to maintain documentation related to methodology used to calculate the ISP and determine eligibility and that it takes approximately 55 minutes (.910 hours) to complete this recordkeeping requirement for each record. The proposed recordkeeping requirement adds a total of 307 annual burden hours and 337 responses into the new information collection request. Once this new collection is merged into OMB Control Number 0584-0026, USDA expects that an additional 307 hours and 337 responses will be added to the collection.

USDA does not expect lowering the threshold to participate in CEP to an ISP of 25% to impact the approved public notification requirements at 7 CFR 245.9(f)(7). While this proposed rule will increase the number of schools eligible for the CEP, the burden for States to notify LEAs of their community eligibility status due to the increased number of eligible schools is already captured above in the reporting requirements at 7 CFR 245.9(f)(6). Making these lists publicly available will not take any additional time than is currently approved under OMB Control Number 0584-0026 and accordingly is not addressed in this information collection.

As a result of the proposals outlined in this rulemaking, FNS estimates that this new information collection will have 3,485,188 respondents, 12,171,267 responses, and 630,207 burden hours.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Once the information collection request for the final rule is approved and the requirements and associated burden for this new information collection are merged into the existing collection, FNS estimates that the burden for OMB Control Number 0584-0026 will decrease by 277,450 responses and 13,534 burden hours.

Reporting

Respondents (Affected Public): Individual/Households; and State, Local and Tribal Government.

The respondent groups identified include households, State Agencies and LEAs.

Estimated Number of Respondents: 3,485,188

Estimated Number of Responses per Respondent: 3.49

Estimated Total Annual Responses: 12,155,590

Estimated Time per Response: 0.052 (approximately 3 minutes)

Estimate Total Annual Burden on Respondents: 628,673 hours

Recordkeeping

Respondents (Affected Public): State, Local and Tribal Government. The respondent groups identified include State Agencies and LEAs.

Estimated Number of Respondents: 15,057

Estimated Number of Responses per Respondent: 1.04

Estimated Total Annual Responses: 15,677

Estimated Time per Response: .098 (approximately 6 minutes)

Estimate Total Annual Burden on Respondents: 1,534 hours

Reporting

Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Response	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Proposed Rulemaking	Hours Currently Approved Under OMB# 0584-0026	Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB# 0584-00xx	Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking
State agency to notify LEAs of their community eligibility status as applicable	245.9(f)(6)	54	85.70	4,628	0.050	231	436	667	231
Total State Agency Reporting		54		4,628		231	436	667	231
LEAs submit to State agency documentation of acceptable ISP of LEA/school electing the provision	245.9(f)(4)(i)	337	1.00	337	0.250	84	125	209	84
LEAs notify households of approval of meal benefit applications	245.6(c)(6)(i)	15,003	219.00	3,285,657	0.020	65,713	67,414	65,713	-1,701
LEAs must notify households in writing that children are eligible for free meals based on direct certification and that no application is required	245.6(c)(6)(ii)	15,003	332.00	4,980,996	0.020	99,620	101,916	99,620	-2,296
LEAs provide written notice to each household of denied free or reduced price benefits	245.6(c)(7)	15,003	11.56	173,435	0.020	3,469	3,548	3,469	-79
LEAs notify households of selection for verification	245.6a(f)	15,003	6.50	97,520	0.250	24,380	25,092	24,380	-712
LEAs must provide households that failed to confirm eligibility with 10 days' notice for	245.6a(j)	15,003	2.65	39,758	0.100	3,976	4,071	3,976	-95

receiving a reduction or termination of free or reduced price meal benefits									
LEA to submit to the State agency for publication a list of eligible and potentially eligible schools and their eligibility status; unless otherwise exempted by State agency	245.9(f)(5)	4,628	1.00	4,628	0.080	370	698	1,068	370
LEAs to amend free and reduced policy statement and certify that schools meet eligibility criteria	245.9(g)	337	1.00	337	0.100	34	50	84	34
Total Local Education Agency Reporting		15,003		8,582,667		197,646	202,914	198,519	-4,396
Total State and Local Agency Level Total		15,057		8,587,295		197,877	203,350	199,186	-4,165
Households complete application form for free or reduced price meal benefits	245.6(a)(1)	3,470,131	1.00	3,470,131	0.110	381,714	390,289	381,714	-8,575
Households assemble written evidence for verification of eligibility for free and reduced price meals and send to LEA	245.6(a)(7)(i)	98,164	1.00	98,164	0.500	49,082	50,185	49,082	-1,103
Total Household Reporting		3,470,131		3,568,295		430,796	440,474	430,796	-9,678
Total Reporting		3,485,188	3.49	12,155,590	.052	628,673	628,673	629,982	-13,842

Recordkeeping

Description of Activities	Regulation Citation	Estimated # of Respondents	Frequency of Responses	Total Annual Responses	Average Burden Hours per Response	Estimated Total Annual Burden Hours for OMB# 0584-00xx Due to Proposed Rulemaking	Hours Currently Approved Under OMB# 0584-0026	Estimated Future Burden Hours for OMB# 0584-0026 After the Merge with OMB #0584-00xx	Estimated Future Change in Burden Hours for OMB# 0584-0026 Due to Rulemaking
State Agency to review and confirm LEAs eligibility to participate in Provisions 1, 2, or 3 or the Community Eligibility Provision	245.9(f)(4)(ii)	54	6.24	337	.080	27	40	67	27
Total State Agency Recordkeeping		54		337		27	40	67	27
LEA must maintain documentation substantiating eligibility determinations for 3 years after the end of the fiscal year	245.6(e)	15,003	1	15,003	0.080	1,200	1,227	1,200	-27
LEA to maintain documentation related to methodology used to calculate the ISP and determine eligibility	245.9(h)(3)	337	1	337	.910	307	455	762	307
Total Local Education Agency Recordkeeping		15,003		15,340		1,507	1,682	1,962	280
Total Recordkeeping		15,057	1.04	15,677	.098	1,534	1,722	2,029	307

OMB# 0584-00xx Due to Proposed Rule

OMB # 0584-0026 Once Merged with OMB# 0584-00xx

TOTAL NO. RESPONDENTS	3,485,188	3,493,364
AVERAGE NO. RESPONSES PER RESPONDENT	3.492	3.513
TOTAL ANNUAL RESPONSES	12,171,267	12,272,745

AVERAGE HOURS PER RESPONSE	0.052	.053
TOTAL BURDEN HOURS	630,207	651,192
CURRENT OMB INVENTORY	0	664,726
TENTATIVE DIFFERENCE DUE TO RULEMAKING	630,207	-13,534

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For the reasons stated in the preamble, FNS proposes to amend 7 CFR part 245 as follows:

PART 245 – DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for 7 CFR Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

§ 245.9 [Amended]

2. In § 245.9, in paragraph (f), wherever it appears, remove “40 percent” and add, in its place “25 percent”, and wherever it appears, remove “30 percent” and add, in its place “15 percent”.

Cynthia Long,

Administrator,

Food and Nutrition Service.

